

A BILL TO BE ENTITLED
AN ACT

To amend an Act revising, superseding, and consolidating the laws relating to the governing authority of DeKalb County, approved March 8, 1956 (Ga. L. 1956, p. 3237), as amended, particularly by an Act establishing the form of government of DeKalb County and fixing the powers and duties of the officers constituting the governing authority of DeKalb County, approved April 9, 1981 (Ga. L. 1981, p. 4304), as amended, so as to revise the qualifications for members of the county commission; to revise the powers and duties of the county commission and chief executive officer; to revise provisions concerning the qualifications of the executive assistant; to revise certain provisions concerning ethics; to provide for related matters; to provide for a referendum; to provide for submission for preclearance under the federal Voting Rights Act; to provide for a contingent effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

An Act revising, superseding, and consolidating the laws relating to the governing authority of DeKalb County, approved March 8, 1956 (Ga. L. 1956, p. 3237), as amended, particularly by an Act establishing the form of government of DeKalb County and fixing the powers and duties of the officers constituting the governing authority of DeKalb County, approved April 9, 1981 (Ga. L. 1981, p. 4304), as amended, is amended by revising subsection (e) of Section 2 as follows:

"(e) Each commissioner shall be a citizen of this state, at least 25 years of age, and shall have been a resident of the geographic area encompassed by the respective commissioner district for at least one year prior to taking office. Each commissioner shall be elected by a majority of the electors voting within the respective commissioner district. Except for displacement of their residences from their respective commissioner districts due to reapportionment of the districts, any commissioners who cease to be residents of their respective commissioner districts during their terms of office shall thereby vacate their

seats on the commission. All members of the commission shall be nominated and elected pursuant to the provisions of Chapter 2 of Title 21 of the O.C.G.A., the 'Georgia Election Code,' as now or hereafter amended."

SECTION 2.

Said Act is further amended by adding a new paragraph to subsection (a) of Section 9 as follows:

"(21) To oversee and, where necessary, to investigate the operations of the chief executive and departments, authorities, or similar divisions of the county government. To effect the purposes of this paragraph, the commission may, through its presiding officer and upon the vote of three commissioners, issue subpoenas to compel the attendance of and to receive testimony from witnesses. Upon the affirmative vote of at least four members of the commission, the commission shall be authorized to refer to the superior court contempt proceedings for alleged violations of any subpoena issued pursuant to this paragraph, and the superior court shall conduct a hearing on the referred violation in the same manner as it would for an alleged violation of a subpoena issued by the clerk of superior court. The commission is authorized to draft the form of its subpoena, which shall be substantially similar in form to subpoenas issued by the clerk of superior court."

SECTION 3.

Said Act is further amended by revising Section 13 as follows:

"SECTION 13.

Powers and duties of the chief executive.

(a) The chief executive shall have the power to supervise, direct, and control the administration of the county government. The chief executive shall carry out, execute, and enforce all ordinances, policies, rules, and regulations of the commission when such ordinances, policies, rules, and regulations become effective. No member of the commission shall directly or indirectly order, instruct, or otherwise attempt to control the actions of county personnel subject to the administrative and supervisory control of the chief executive; however, any commissioner may directly request action by the head of any department necessary to accomplish the duties and responsibilities of the role of commissioner. Nothing herein shall be construed to preclude any commissioner from obtaining from any person, including any employee of DeKalb County, information necessary to provide ordinary constituent services and to establish policy. For purposes of

60 this subsection, the term 'ordinary constituent services' shall include, by way of example
 61 and not of limitation, responding to constituent concerns and inquiries regarding the
 62 ministerial activities of the administration, such as road repairs, traffic control device
 63 management, and licensing.

64 (b) Subject to the approval of the commission, the chief executive shall have the power to
 65 change, consolidate, or abolish any departments, agencies, or offices over which the chief
 66 executive exercises supervision and control, except that the department of finance shall be
 67 maintained at all times as a separate and distinct department and may not be abolished by
 68 the chief executive or by the commission. Subject to the approval of the commission, the
 69 chief executive may create other departments, agencies, and offices, which departments,
 70 agencies, and offices, when created, shall be under the supervision and control of the chief
 71 executive.

72 (c)(1) Subject to confirmation by a majority vote of the commission, the chief executive
 73 shall appoint the executive assistant and the county attorney. The executive assistant
 74 shall be subject to the requirements of Section 14 of this Act. No member of the
 75 commission or the commission itself shall be authorized to nominate persons for the
 76 office of executive assistant or county attorney. Within the budgetary limitations and
 77 subject to the approval by a majority vote of the commission, the chief executive shall fix
 78 the compensation of the executive assistant and the county attorney. Both of said officers
 79 shall serve at the pleasure of the chief executive. The commission may also discharge
 80 either such officer for cause, but the affirmative vote of at least five members of the
 81 commission shall be required to discharge either such officer.

82 (2) Subject to confirmation by a majority vote of the commission, the chief executive
 83 shall appoint the planning director, finance director, and merit system director. No
 84 member of the commission or the commission itself shall be authorized to nominate
 85 persons for any such position. All three of said officers shall be under the DeKalb
 86 County Merit System.

87 (d) Subject to budgetary limitations and DeKalb County Merit System regulations and
 88 except as provided in subsection (c) of this section, the chief executive shall have exclusive
 89 authority to appoint and remove all employees and officials of the county, except
 90 employees of the commission, and except that deputies and employees of the elected
 91 county officers of DeKalb County shall be subject to appointment, removal, supervision,
 92 and control of the respective elective county officers. The compensation of persons filling
 93 offices and positions created by state statutes shall be fixed by the chief executive within
 94 budgetary limitations when such state statutes authorize or require such compensation to
 95 be fixed by county governments or by county governing authorities.

(e) The chief executive may convene special meetings of the commission when deemed necessary, but all members shall be notified at least three days in advance of any such special meeting.

(f) Reserved.

(g) The chief executive shall have the power to investigate the affairs, records, and expenditures of the various authorities, boards, councils, commissions, committees, and similar bodies or agencies, whether created by ordinance of the commission or by Acts of the General Assembly, relating to the affairs of the county and to report thereon to the commission.

(h) The chief executive shall represent the county in intergovernmental matters and shall seek to promote and improve the government of the county and encourage the growth of the county and promote and develop the prosperity and well-being of the citizens of the county.

(i) The chief executive, within 120 days after the close of each fiscal year, shall prepare and submit to the commission a complete annual report on the financial affairs and activities of the county for the immediately preceding fiscal year. The annual report shall show all income from all sources, including state, county, and federal funds, and all expenditures, including, but not limited to, records of all contracts and contract changes. The chief executive shall cause a summary of said annual report to be published in the official organ of DeKalb County. Said published summary shall state that a copy of the full report is available from the office of the chief executive. The chief executive shall also send copies of the full report to each branch of the county library. The chief executive shall also make financial reports during the year as may be required by the commission.

(j) The chief executive may recommend, at any time, to the commission for its formal consideration such measures or proposals as are deemed necessary or desirable to improve the administration of the affairs of the county.

(k) The chief executive shall devote full time to the duties of the office and shall have no other source of employment."

SECTION 4.

Said Act is further amended by revising Section 13A as follows:

"SECTION 13A.

(a)(1) When this Act or any other law of this state authorizes or requires a county governing authority, including any such law which refers to a local governing body with the intention of including a county governing authority, to appoint or elect a person to fill

a post or vacancy in any public office or as a member of any public authority, board, commission, or other body or agency, such post or vacancy shall be filled as follows:

(A) The chief executive shall nominate a person by sending a written notice to the commission, and such notice shall specify the post or vacancy to be filled, the date such post or vacancy is to be filled, the qualifications, if any, which must be possessed by a person filling the post or vacancy, and the name of the person nominated by the chief executive;

(B) Within 20 days after the date the notice described in subparagraph (A) of this paragraph is received, the commission, either at a regular or called meeting, shall confirm or reject the nominee of the chief executive; and

(C) If the nominee of the chief executive is rejected by the commission, then the process in subparagraphs (A) and (B) of this paragraph shall be repeated, beginning ten days after such rejection, until the commission approves a person nominated by the chief executive.

(2) When the need to fill a post or vacancy is known by the chief executive at least 60 days in advance of the date on which the post or vacancy should be filled, the chief executive shall initiate the procedures provided by paragraph (1) of this subsection far enough in advance to permit such post or vacancy to be filled at the proper time. In all other cases, the chief executive shall initiate such procedures as soon as practicable after learning of the need to fill the post or vacancy.

(b) When a law described in subsection (a) of this section authorizes a person elected or appointed to fill a post or vacancy to be removed from office by a county governing authority, such power of removal may be exercised by the affirmative vote of at least four members of the commission. Such power of removal may be exercised by the commission without the concurrence of the chief executive, but the chief executive may recommend such removal to the commission.

(c) Whenever any other law of this state authorizes or requires the chairman of the board of commissioners of a county or the elected chief executive officer of a county, by whatever name designated, to hold another office or to serve as a member of any public authority, board, commission, or other body or agency, such law shall be construed to grant such authority or apply such requirement to the chief executive.

(d) Whenever any other law of this state refers, for purposes other than those described in subsection (c) of this section, to the chairman of the board of commissioners of a county or to the elected chief executive officer of a county, by whatever name designated, such law shall be construed to refer to the chief executive."

SECTION 5.

Said Act is further amended by revising Section 14 as follows:

"SECTION 14.

Executive assistant; administrators.

(a) Subject to the qualifications for said office as hereinafter provided in this section, the chief executive shall nominate, and the commission shall confirm pursuant to the provisions of paragraph (1) of subsection (a) of Section 13A, an executive assistant. The executive assistant shall be the chief administrative aide to the chief executive and the commission and shall be responsible to the chief executive and the commission for the proper administration of the affairs of the county.

(b) When directed to do so by the chief executive, the executive assistant may exercise any of the administrative duties and powers vested in the chief executive by law or by ordinances, rules, and regulations adopted by the commission.

(c) The executive assistant shall hold a college degree and must have at least five years of experience in a supervisory capacity as an employee, director, administrator, or manager of a city or county government or a state or federal agency or equivalent experience in the private sector or any combination thereof.

(d) Any person who has held the office of or served as chief executive shall not be eligible to hold the position of executive assistant.

(e) After appointment, the executive assistant shall not take part in the management of any political campaign for any elective public office or hold office in any political party or body. If the executive assistant participates in political activities in violation of this subsection, such participation, by operation of law, shall result in the immediate discharge of the executive assistant, and the office of executive assistant shall be vacant.

(f) The chief executive shall also have exclusive power to appoint, remove from office, and, within budgetary limitations, fix the compensation of two administrators to assist the executive assistant in such manner as the chief executive shall direct; provided, however, that such directives shall reasonably relate to the chief executive's official duties."

SECTION 6.

Said Act is further amended by revising the second unnumbered paragraph of Section 17 as follows:

"The chief executive shall cause to be published in the official organ of DeKalb County a copy of the proposed budget along with a notice to the public that a public hearing on the proposed budget shall be held at a time and place certain, which time shall be not less than

ten days following the date of the publication. At this public hearing, the commission shall review the proposed budget. It may adopt the budget as presented by the chief executive or it may make such amendments thereto as it deems necessary to maintain the county in a sound financial condition. Nothing herein shall prevent the commission from continuing the hearing on the proposed budget from time to time, provided that the time and place to which the hearing is continued shall be publicly announced at the previous hearing. However, the final budget shall be approved and adopted before March 1 of the year to which it pertains. The final budget shall constitute the commission's appropriations of all funds for such year. The budget may be amended during the calendar year which it covers upon formal action of the commission in a regular meeting, but no increase in appropriations shall be made therein without provision also being made for financing same."

SECTION 7.

Said Act is further amended by revising paragraph (11) of subsection (a) of Section 19 as follows:

"(11) Perform such other duties as may be assigned by the chief executive to the extent that such duties relate reasonably to the functions listed herein."

SECTION 8.

Said Act is further amended by revising Section 22 as follows:

"SECTION 22.

Officials not to be interested in contracts.

Neither the chief executive nor any member of the commission or other county officer empowered to use public or county funds for the purchase of goods, property, or services of any kind for public or county purposes shall be financially interested, directly or indirectly, in any contract to which the county is a party, either as principal, surety, or otherwise. Such officer and any partner, agent, servant, or employee of a firm of which such officer is a member or by whom he or she is employed shall be prohibited from purchasing from or selling to the county any real or personal property, goods, or services. Any contract made in violation of any of the foregoing provisions shall be void, and the officer so offending shall be removed from office upon proper proceedings instituted by any taxpayer in said county in accordance with the provisions of Section 36-1-14 of the O.C.G.A.; provided, however, that the provisions of this Section shall not be applicable to any contract where such financial interest has been disclosed fully pursuant to Section 22A of this Act and which

has been approved, prior to execution, performance, and payment thereon, by a majority vote of the commission by a proper entry on the minutes of the commission."

SECTION 9.

Said Act is further amended by revising paragraph (1) of subsection (a) of Section 22A as follows:

"(a)(1) It is essential to the proper administration and operation of the DeKalb County government that the members of its governing authority be and give the appearance of being independent and impartial; that public office not be used for private gain; and that there be public confidence in the integrity of the DeKalb County governing authority. Because the attainment of one or more of these ends is impaired whenever there exists or appears to exist a conflict between the private interests and public responsibilities of members of the DeKalb County governing authority, the public interest requires that the General Assembly protect against such conflicts of interest by establishing by law appropriate ethical standards with respect to the conduct of the members of the governing authority in situations where a conflict may exist."

SECTION 10.

Said Act is further amended by revising subsections (c), (d), and (e) of Section 22A as follows:

"(c) No member of the governing authority shall:

(1) By the member's conduct give reasonable basis for the impression that any person can improperly influence the member or unduly enjoy the member's favor in the performance of his or her official acts or actions or that the member is affected unduly by the rank or position of or kinship or association with any person;

(2)(A) Directly or indirectly request, exact, receive, or agree to receive a gift, loan, favor, promise, or thing of value for himself or herself or another person if:

(i) It tends to influence him or her in the discharge of his or her official duties; or

(ii) The member recently has been, or is now, or in the near future may be, involved in any official act or action directly affecting the donor or lender.

(B) Subparagraph (A) of this paragraph shall not apply in the case of:

(i) An occasional nonpecuniary gift of insignificant value;

(ii) An award publicly presented in recognition of public service; or

(iii) A commercially reasonable loan made in the ordinary course of business by an institution authorized by the laws of Georgia to engage in the making of such a loan;

(3) Disclose or otherwise use confidential information acquired by virtue of the member's position for his or her or another person's private gain;

(4) Appear on the member's own personal behalf or represent, advise, or appear on the personal behalf of, whether paid or unpaid, any person before any court or before any legislative, administrative, or quasi-judicial board, agency, commission, or committee of the state or of any county or municipality concerning any contract or transaction which is or may be the subject of an official act or action of DeKalb County or otherwise use or attempt to use the member's official position to secure unwarranted privileges or exemptions for himself or herself or other persons;

(5) Engage in, accept employment with, or render services for any private business or professional activity when such employment or rendering of services is adverse to and incompatible with the proper discharge of his or her official duties. For the purposes of this paragraph, the employment of a consultant by any business involving matters unrelated to any contract or transaction by or with DeKalb County shall not be deemed incompatible with such consultant's official duties;

(6) Acquire an interest in any contract or transaction at a time when the member believes or has reason to believe that such an interest will be affected directly or indirectly by his or her official act or actions or by the official acts or actions of the governing authority of DeKalb County; or

(7) Engage in any activity or transaction that is prohibited by law now existing or hereafter enacted which is applicable to the member by virtue of being a member of the governing authority.

(d) A member of the governing authority who has an interest that he or she has reason to believe may be affected by the member's official acts or actions or by the official acts or actions of the governing authority of DeKalb County shall disclose the precise nature and value of such interest by sworn written statement to the board of ethics and ask for its opinion as to the propriety of said interest. Every member of the governing authority who knowingly has any interest, direct or indirect, in any contract to which DeKalb County is or is about to become a party, or in any other business with DeKalb County, shall make full disclosure of such interest to the governing authority of DeKalb County and to the board of ethics. The information disclosed by such sworn statements, except for the valuation attributed to the disclosed interest, shall be made a matter of public record by the board of ethics.

(e) A member of the governing authority shall disqualify himself or herself from participating in any official act or action of DeKalb County directly affecting a business or activity in which the member has any interest, regardless of whether it is a remote interest."

SECTION 11.

Said Act is further amended by revising subsections (g) and (h) of Section 22A as follows:

"(g) DeKalb County shall not enter into any contract with or take any official act or action favorably affecting any person or business represented by such person who has been within the preceding 12-month period a member of the governing authority.

(h)(1) This section shall be construed liberally to effectuate its purposes and policies and to supplement such existing laws as may relate to the conduct of members of the governing authority.

(2) The propriety of any official act or action taken by or transaction involving any member of the governing authority immediately prior to the time this section shall take effect shall not be affected by the enactment of this section.

(3) The provisions of this section are severable and, if any of its provisions shall be held unconstitutional or invalid by a court of competent jurisdiction, the decision of the court shall not affect or impair any of the remaining provisions."

SECTION 12.

Said Act is further amended by revising subparagraph (i)(5)(B) of Section 22A as follows:

"(B) To render advisory opinions with respect to the interpretation and application of this section to all persons who seek such opinions regarding whether a particular course of conduct would constitute a violation of the standards imposed in this section or other applicable ethical standards. Such opinions shall be binding on the board of ethics in any subsequent complaint concerning the person who sought the opinion and acted in good faith, unless material facts were omitted or misstated in the request for the advisory opinion;".

SECTION 13.

Unless otherwise prohibited by the federal Voting Rights Act of 1965, as amended, the election superintendent of DeKalb County shall call and conduct a special election for the purpose of submitting this Act to the electors of DeKalb County for approval or rejection. The election superintendent shall conduct that election on the Tuesday after the first Monday in November, 2009. The election superintendent shall issue the call and conduct that election as provided by general law. The superintendent shall cause the date and purpose of the election to be published once a week for two weeks immediately preceding the date thereof in the official organ of DeKalb County. The ballot shall have written or printed thereon the words:

"() YES Shall the Act be approved which revises the qualifications, powers, and
() NO duties of the chief executive officer, the executive assistant, and members
of the county commission?"

All persons desiring to vote for approval of the Act shall vote "Yes," and all persons desiring to vote for rejection of the Act shall vote "No." If more than one-half of the votes cast on such question are for the approval of the Act, Sections 1 through 12 of this Act shall become of full force and effect on the first day of January immediately following such election. If the Act is not approved or if the election is not conducted as provided in this section, Sections 1 through 12 of this Act shall not become effective, and this Act shall be automatically repealed on the first day of January immediately following that election date. The expense of such election shall be borne by DeKalb County. It shall be the duty of the election superintendent of DeKalb County to certify the results thereof to the Secretary of State.

SECTION 14.

The governing authority of DeKalb County shall through its legal counsel cause this Act to be submitted for preclearance under the federal Voting Rights Act of 1965, as amended; and such submission shall be made to the United States Department of Justice or filed with the appropriate court no later than 45 days after the date on which this Act is approved by the Governor or otherwise becomes law without such approval.

SECTION 15.

Except as otherwise provided in Section 13 of this Act, this Act shall become effective upon its approval by the Governor or its becoming law without such approval.

SECTION 16.

All laws and parts of laws in conflict with this Act are repealed.